

***United States Court of Appeals
for the Second Circuit***



APPENDIX

*Original with Affidavit of
Mailing*

76-1146

**United States Court of Appeals
FOR THE SECOND CIRCUIT**

Docket No. 76-1146

UNITED STATES OF AMERICA,

Appellee,

—against—

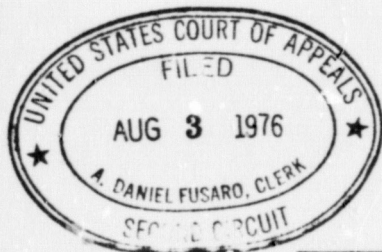
CHARLES FORBES,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT'S APPENDIX

DAVID G. TRAGER,
*United States Attorney,
Eastern District of New York.*



PAGINATION AS IN ORIGINAL COPY

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RJD:ELH:lr
P. # 725,559

HAND DELIVERY

GOVERNMENT
EXHIBIT

3500-16

A

1

March 19, 1975

Honorable Thomas C. Platt
United States District Judge
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Paul Fleischer
Criminal Docket No. 72 CR 1297

Dear Judge Platt:

This letter is written to bring to the Court's attention the details of the cooperation of the above named defendant with the Government. Mr. Fleischer is scheduled for sentencing, on March 21, 1975, on his plea of guilty to the first count of the above-captioned indictment, in which he is charged with theft of goods traveling as part of an interstate shipment.

Since June 1972, this defendant has cooperated with this office and the Federal Bureau of Investigation in the investigation of numerous instances of thefts from interstate shipment and the receipt of property stolen from interstate shipment. During the course of numerous interviews and extensive Grand Jury testimony Mr. Fleischer has identified persons responsible for theft and illegal resale of approximately twenty thousand dollars (\$20,000) worth of property. In addition, his information has provided leads to the ultimate solving of approximately six (6) additional thefts. As a result of Mr. Fleischer's assistance, the Government expects to file indictments naming at least eleven (11) defendants in the near future.

Mr. Fleischer has also indicated a willingness to testify on behalf of the Government at trial if necessary.

Hon. Thomas C. Platt

-2-

March 19, 1975

The above information is being provided for such use, as may be appropriate, in the determination of sentence.

Very truly yours,

DAVID G. TRAGER
United States Attorney

By:

Ethan Levin-Epstein
Assistant U.S. Attorney

cc: Edward Kelly, Esq.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK



-----X
THE UNITED STATES OF AMERICA :

-against-

: 72 CR 1297

PAUL FLEISCHER :

Defendant :

-----X

225 Cadman Plaza, E.
Brooklyn, N.Y.
March 21, 1975

Sentencing

Before: HON. THOMAS C. PLATT
District Court Judge

Joseph L. Benedetto
Acting Court Reporter

APPEARANCES:

DAVID G. TRAGER, U.S. Attorney
225 Cadman Plaza, E.
Brooklyn, N.Y. 11201
Representing the U.S. of America
By: ETHAN-LEVIN EPSTEIN
Assistant U.S. Attorney

EDWARD KELLY
Office of Federal Defender
26 Court Street
Brooklyn, N.Y. 11201
Attorney for Defendant

MR. KELLY: The defendant is ready for sentencing.

THE COURT: There's no legal cause why the Court should not impose sentence?

MR. KELLY: As your Honor knows, this defendant pleaded guilty in September to one count of the indictment in which he was charged with theft of a motor vehicle.

It's a very serious crime. I think it's indicated in the report that the theft of the car was effected through the use of a weapon and there's some indication that one of the defendants was one of the prime mover.

The charge is a serious one and the Court has to look seriously at it but I would ask your Honor to take into consideration that this particular incident the defendant pleaded guilty to is three years old and although it is part of the history, the Court must take it into consideration.

The Court should look to what this defendant needs now with respect to his rehabilitation and continuation in society as a good citizen.

Since that time, your Honor, and I might say with respect to the charge that the defendant, himself, was so overcome with remorse that he, himself, turned himself over to the FBI.

He wasn't caught and surrendered voluntarily and gave information about his own activities and others involved and for the last three years I think the defendant has done a good job.

He has a viable marriage. His type of work is not a skilled type of work that, unfortunately, results from the fact that he did not have a thorough education.

I think he dropped out of school when he was very young. He has been in the scrap business some period of time now and is, himself, assisting a plumber, learning the trade of a plumber.

I would ask your Honor to take into consideration these facts in imposing sentence and I would ask your Honor to take into consideration the letter transmitted to you by the

United States Attorney.

What I am trying to say to the Court, your Honor, is this: The defendant today is a different man than he was three years ago and I think your Honor should take into consideration what the defendant is now and what he needs in your view.

I am not going to suggest to the Court this defendant should be given probation. I think the crime is a serious one and in addition the defendant has been in violation of the law before and has received probation.

He is again before the Court again notwithstanding the fact he may have been given consideration before.

I ask your Honor to take all this in consideration and be as lenient as you can in imposing sentence.

THE COURT: Do you wish to say something?

MR. FLEISCHER: I turned myself in. I knew what I was doing was wrong and I just want to stop and I'm sorry for what I did.

THE COURT: I've taken all that in consideration and I've taken into consideration

the fact you did turn yourself in but this is not the first time around. You've been given a couple of breaks before this.

You can't keep coming back and saying, "I want one more break" because the system doesn't work that way.

It's a one strike break and out. You've had two plus a dismissal of a recent offense here in this very court in '71 so I don't think the Court can excuse this without a sentence.

Were it not for your cooperation and the things outlined by your attorney, your sentence would be easily double, if not more than the sentence you are going to get.

On count one of the indictment, the defendant is hereby committed to the custody of the Attorney General of the United States or his duly authorized representative to a place of confinement for a term of three years and if the defendant should come before the Parole Board under Title 18, 4208 a (2) to such time as the Parole Board properly may determine.

MR. EPSTEIN: Your Honor, the Government has a motion to make as to counts two and three,

1
2 72 CR 1297, and moves to dismiss.

3 THE COURT: Granted.

4 MR. KELLY: Would your Honor consider
5 extending the sentence two weeks for the
defendant to make arrangements for his wife
and so forth?

THE COURT: Any objection?

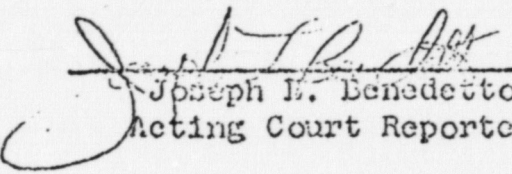
MR. EPSTEIN: No objection.

THE COURT: Sentence is stayed until
April 4th, at ten o'clock. The defendant
is continued on bail.

C E R T I F I C A T E

The foregoing six pages is a true and accurate transcript of proceedings during sentencing on March 21, 1975 before the Hon. Thomas Platt at the United States District Court for the Eastern District of New York in the matter of The United States of America against Paul Fleischer, 72 CR 1297, as transcribed from my shorthand record.

I am not related to any of the parties in said matter and have no financial interest in same, having acted solely in the capacity of Acting Court Reporter.



Joseph E. Benedetto
Acting Court Reporter

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

RJD:EL-E:sj
F# 725,509

United States Department of Justice

UNITED STATES ATTORNEY

EASTERN DISTRICT OF NEW YORK
FEDERAL BUILDING
BROOKLYN, N. Y. 11201

A 10



June 20, 1975

Edward Kelly, Esq.
Federal Defender Services Unit
Legal Aid Society
26 Court Street
Brooklyn, New York

Re: U.S. v. Paul Fleischer
72 CR 1297

Dear Mr. Kelly:

This is to confirm that an agreement exists between your client, Paul Fleischer, and the Office of the United States Attorney, Eastern District of New York, as follows:

1. Mr. Fleischer has agreed to cooperate fully with the United States in its investigation into various violations of federal law of which he has personal knowledge. Specifically, Mr. Fleischer has agreed to testify before the federal Grand Jury and at trial, if necessary, with respect to his knowledge regarding various thefts from interstate shipment and incidents of persons receiving or possessing goods stolen from interstate shipments, knowing them to have been stolen.

2. Mr. Fleischer has agreed, and it is understood, that should he ever give materially false testimony under oath the Government reserves the right to prosecute him for perjury.

3. Mr. Fleischer has agreed, and it is understood, that he will not be prosecuted for any personal involvement about which he would testify with respect to the following thefts from interstate shipment:

- (a) Lerner Dress Shops, February, 1972.
- (b) Royal Merchandise Company, February 23, 1972.
- (c) Arlene Knitwear Company, March 3, 1972.
- (d) Splendorform Brassiere Company, May 10, 1972.
- (e) Liz Cartage Company, May 2, 1972.
- (f) Callahan Trucking Company, December 16, 1969.
- (g) Great Eastern Express Company, August 31, 1971.
- (h) All Brands Appliance Company, January 14, 1970.

However, in consideration of this representation by the Government, it is understood that Mr. Fleischer has previously entered a plea of guilty to one count alleging theft from interstate shipment of goods exceeding \$100.00 in value, in violation of 18 U.S.C. §659, as contained in indictment number 72 CR 1297. It is further understood and acknowledged that on March 21, 1975, when Mr. Fleischer was sentenced to a term of three (3) years in the custody of the Attorney General, the remaining two counts in that indictment were dismissed on motion of the Government.

4. Mr. Fleischer has agreed, and it is understood, that, as part of his continuing cooperation, he will testify for the Government in the following outstanding cases:

- (a) United States v. Peters, et al.,
75 CR 275
- (b) United States v. Allicino, et ano.,
75 CR 278
- (c) United States v. Broveman, et al.,
75 CR 280

5. Mr. Fleischer agrees, and it is understood, that the United States has made no representations, promises or predictions to him with respect to parole, eligibility for parole or possible reduction of his sentence, such matters being solely within the discretion of the Court and the United States Board of Parole.

6. Mr. Fleischer agrees, and it is understood, that should it become necessary, as a result of his cooperation, in the opinion of the United States, the Government will undertake to provide Mr. Fleischer and his immediate family with appropriate protection from harm or threats of harm.

If the foregoing accurately reflects your understanding of the existing agreement between Mr. Fleischer and the United States please initial the extra copy of this letter which I have enclosed, have Mr. Fleischer initial it, and return it to me so that I may include it as part of the United States Attorney's file.

Very truly yours,

DAVID G. TRAGER
United States Attorney

By: *Ethan Levin-Epstein*
Ethan Levin-Epstein
Assistant U.S. Attorney

Enclosure

Paul Fleischer 6/23/75

RJD:EL-E:SM
F. #725,509

October 28, 1975

GOVERNMENT
EXHIBIT

3500-33

United States Board of Parole
c/o Ms. Deverly Wright
Case Manager
Metropolitan Correctional Center (New York)
150 Park Row
New York, New York

Re: Paul Fleischer, Inmate No. 77178-158
Docket No. 72 CR 1297

Dear Sirs:

It has come to our attention that the above-captioned inmate is scheduled for review by the Board on November 4, 1975. This letter is written for the purpose of apprising the Board of certain facts, to be utilized in whatever manner the Board deems appropriate. It is not to be considered as a recommendation for or against parole, but simply as background information which may be of use to you in your consideration of this case.

Mr. Fleischer's first contact with the authorities with respect to the matter for which he is currently incarcerated, began in June, 1972, when he voluntarily appeared and surrendered at Federal Bureau of Investigation Headquarters in New York. Starting then, he offered to cooperate fully with the Government in the investigation of numerous armed thefts from interstate and foreign shipments (truck hijackings) occurring in the Metropolitan area. During the course of his cooperation with the Federal Bureau of Investigation, Mr. Fleischer has given information relative to, at least, fifteen different thefts. In all, the goods stolen totaled in excess of \$250,000.

United States Board of Parole - 2 -

October 28, 1975

Mr. Fleischer's information has provided investigative leads towards the possible prosecution of as many as twenty different defendants, responsible for the operation of at least four separate organized hijacking rings in this area.

To date, as a result of Mr. Fleischer's testimony before the Federal Grand Jury in the Eastern District of New York, thirteen defendants have been indicted. As of the writing of this letter six of the thirteen have either entered guilty pleas or been convicted at trials where Mr. Fleischer testified as a witness for the Government.

Mr. Fleischer has indicated a desire to continue to cooperate in the future and is scheduled to testify, at this time, in three additional trials.

It should be noted that Mr. Fleischer's agreement to cooperate with the Government persists, notwithstanding a genuine risk of danger to both himself and his family. It is anticipated that Mr. Fleischer's cooperation will continue whether or not he is incarcerated.

Very truly yours,

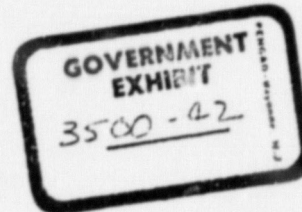
DAVID G. TRAGER
United States Attorney

By:

Ethan Levin-Epstein
Assistant U.S. Attorney

cc: Edward Kelly, Esq.
Legal Aid Society

Mr. Joseph Pokinski
Administrator Examiner
U . S. Board of Parole
Department of Justice
Scott Plaza Two, 6th Floor
Industrial Highway
Philadelphia, Pennsylvania 19113



Re; PAUL FLEISCHER

Dear Mr. Pokinski:

This letter is meant to serve as an explanation for the gratitude this office feels, and the obligation our government should have for Paul Fleischer.

It is also meant to contravene a denial of parole resulting from a hearing conducted for Mr. Fleischer on Nov. 5th, 1975.

It was my intention to be personally present at that hearing and speak on his behalf, but I was engaged in trial, oddly enough as a result of information provided by Mr. Fleischer.

There came a time in the late spring of 1972, when Paul Fleischer thoroughly tired and disgusted with his way of life, had determined that as a duty to his wife family and himself, he wished to confess his anti-social behavioural patterns, and so he approached the Federal Bureau of Investigation, and ultimately came to this office.

He voluntarily explained his part in activities connected with hi-jacking.

He was neither suspected of, nor under investigation for these offenses, at that time. No-one can deny the courage and forthrightness that this confession demanded.

However, his confession was not only for his actions, but a candid, honest revelation concerning all who participated, and resulting from these revelations, the government has successfully prosecuted those, who but for Mr. Fleischer's candor and courage, would still be at large, continuing their criminal activities.

Mr. Fleischer was sentenced to serve a period of three years in prison, but more than that, he has placed his wife, and his family, and himself in real physical danger, by his action in speaking out.

I feel that the boards attention should also be drawn to the fact that for a period of several months following his approach to the F.B.I, Mr. Fleischer worked as an undercover informer, in close liason with Agents of the Bureau.

It is Mr. Fleischers plan, and our Governments promise that upon his release, he shall be provided with a new identity and credentials, and given assistance in establishing a new life, together with his family, in a fresh part of the country, clear of the environment which Mr. Fleischer now realises to be worthless and wasteful.

continued;

As a youngster, some fourteen years ago, Mr. Fleischer served a successful probation period, for minor convictions, and between that time and the voluntary surrender, there was a substantial and complete period of no legal infractions,.

The guidelines set forth by the institutional parole board must be flexible, even in their minds, or no appellate procedures would exist.

It is this flexibility that this office calls for now.

We have in Mr. Paul Fleischer, a man, who at great risk to himself and his family, has helped his government. We can do no less than to show him every consideration, and to permit him the opportunity we feel that he richly deserves.

Parole may extend to Mr. Fleischer a release from incarceration, but no gesture by our Government from the fear, both physical and mental which must accompany him for the rest of his life.

This, will forever be his prison.

Yours Sincereley

Attached a list outlining the specifics of Mr. Fleischer's co-operation. In addition to this, his undercover work, and his testimony, have provided invaluable background material which could not have been obtained from any other source.

U.S. versus PETERS et AL Docket # 75 CR 275. Sept 1975.

Theft of Interstate Shipment.
Possession of Stolen Property.
Possession of a dangerous weapon.
(As a result of this prosecution the defendants were found guilty on all counts after trial.)

Three other defendants pled guilty to one count of the indictment to satisfy all counts of the indictment.
Those defendants accepting pleas, were at that time already serving prison sentences.

U.S. versus Broverman - et AL; Docket # 75 CR 280 Oct 1975.

Possession of Stolen Property.

(Two defendants were found guilty, and one was acquitted after trial)

U.S. Versus ALLICINO et Ano Docket # 75 CR 278

(Possession of Stolen Property)

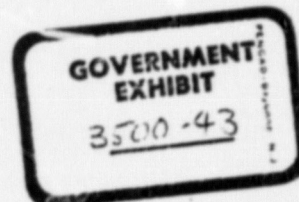
Severance of initial Proceedings due to two defendants suffering heart attacks.

RJD:EL-111
P# 722-509

A 17

December 8, 1975

Regional Appellate Division
United States Board of Parole
Scott Plaza Two
Industrial Highway
Philadelphia, Pennsylvania 19113



Re: Paul Fleischer, Inmate
No. 77178-153

Dear Sirs:

It has come to my attention that the above-captioned federal prisoner is appealing an initial denial of parole. In order that his appeal be as complete as possible, this letter is intended to provide the Board with information it may deem appropriate to consider in its evaluation of this case. The letter should not be considered a recommendation for or against parole, that decision being solely within the discretion of the Board.

Mr. Fleischer has been, and is, a cooperating Government witness in a series of criminal trials involving the armed hijacking of goods traveling in interstate commerce. He began this relationship with the Government in June, 1972, when he voluntarily surrendered to agents of the Federal Bureau of Investigation and began to provide them with information regarding as many as fifteen (15) separate hijackings. At that time, Mr. Fleischer was utilized, by the F.B.I., as both a source of prior information and as a source of current information regarding criminal activity.

As his cooperation continued, Mr. Fleischer agreed to, and did, testify before a federal Grand Jury.

As a result of his testimony, and other evidence, three (3) indictments have been returned thus far. In all, thirteen (13) defendants have been named in the following cases:

United States v. Charles Peters 75 CR 275
Gerard Collins
Joseph Addoloria
Rocco Mastrangelo
Paul Flammia
Charles Forbes
Gerald Barry

United States v. Gerard Allicino 75 CR 278
Seymour Rosenwasser

United States v. Solomon Broverman 75 CR 280
Lawrence Cesare
Wallace Cascio
Eugene Santore

At this time, four (4) of the defendants have entered guilty pleas, four (4) have been convicted after trials (at which Mr. Fleischer testified), one (1) was acquitted and four (4) are awaiting trial.

It should be noted that Mr. Fleischer's cooperation has been full and unhesitant, despite a very real risk of harm to himself and to his family.

It is no small measure of the sincerity shown by Mr. Fleischer, in cooperating, to note that he has indicated that he will continue to assist in the prosecution of these and other potential cases whether or not this appeal is decided favorably to his case.

If we can be of any further assistance to the Board, please do not hesitate to call on us.

Very truly yours,

DAVID G. TRAGER
United States Attorney

By:
Ethan Levin-Epstein
Assistant U.S. Attorney

RJD:EL-E:sj
F# 725,500



December 18, 1975

Larry Taylor, Warden
Metropolitan Correctional Center
150 Park Row
New York, New York

Re: Paul Fleischer
Inmate No. 77173-158

Dear Warden Taylor:

This is to confirm my telephone message to your office of December 17, 1975.

This office does not oppose the granting of a routine furlough during the upcoming holidays to the above-captioned federal prisoner.

Very truly yours,

DAVID G. TRAGER
United States Attorney

By:
Ethan Levin-Epstein
Assistant U.S. Attorney

cc: Steven Harrison
Unit Manager
Metropolitan Correctional Center

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----- X

UNITED STATES OF AMERICA :

Appellee, :

-against- :

CHARLES FORBES, :

Appellant. :

----- X

STATE OF NEW YORK)

COUNTY OF KINGS)

EASTERN DISTRICT OF NEW YORK)

SS:

A F F I D A V I T

Docket No. 76-1146

ETHAN LEVIN-EPSTEIN, being duly sworn, deposes and
says:

(1) He is an Assistant United States Attorney on
the staff of DAVID G. TRAGER, United States Attorney for the
Eastern District of New York.

(2) He is the Assistant United States Attorney
who was assigned to conduct the investigation which cul-
minated in the trial of the above-captioned matter in the
United States District Court, Eastern District of New York.

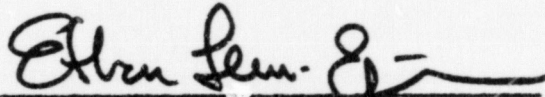
(3) He is the Assistant United States Attorney who
conducted the trial of the above-captioned matter on behalf
of the United States.

(4) He is familiar with all promises which were
made by the United States to one Paul Fleischer, a Govern-
ment witness, in the above-captioned matter.

(5) As of January 29, 1976, the date on which
Mr. Fleischer testified at the trial of the above-captioned
case, absolutely no promises had been made to him, or to

anyone on his behalf, that he would be relocated and given a new identity, at the Government's expense, after he testified and in return for his testimony.

Dated: Brooklyn, New York
July 28, 1976


ETHAN LEVIN-EPSTEIN
Assistant U.S. Attorney

Sworn to before me this
28th day of July 1976

CO-EN
QUAL
New York
1977

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

LYDIA FERNANDEZ, being duly sworn, says that on the 28th day of July, 1976, I deposited in Mail Chute Drop for mailing in the U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and State of New York, two copies of Government's Appendix of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper directed to the person hereinafter named, at the place and address stated below:

Charles De Fazio, III, Esq.
922 Washington Street
Hoboken, N. J. 07030

Sworn to before me this

28th day of July, 1976

Martha Schuyler

Lydia Fernandez
LYDIA FERNANDEZ

Notary Public, State of New York
No. 255,003,0

Qualified in Kings County
Commission Expires March 30, 1977